

STATE OF CALIFORNIA

Public Utilities Commission
San Francisco

M e m o r a n d u m

Date: April 1, 2005

To: The Commission
(Meeting of April 7, 2005)

From: Delaney L. Hunter, Director
Office of Governmental Affairs (OGA) — Sacramento

**Subject: AB 1585 (Blakeslee) Renewable energy resources: California
Renewables Portfolio Standard
As Introduced February 22, 2005**

LEGISLATIVE SUBCOMMITTEE RECOMMENDATION: Support in concept

SUMMARY: This bill would make several changes to the existing Renewables Portfolio Standard (RPS) Program. Principal changes include: accelerating the 20% renewable energy target from 2017 to 2010; requiring municipal utilities to increase annual renewable procurement by 1% per year, to reach 20% by 2017; directing the CEC and CPUC to develop a system of Tradable Renewable Energy Certificates (TRECs) as a means of compliance with RPS goals (effectively, the purchasing of the social benefits of renewable energy without purchasing the energy itself). The CPUC and CEC would be granted authority to limit the utilization of TRECs in RPS procurement, and to set goals for renewable energy beyond the 2010 timeframe.

DIGEST: Existing law, (Public Utilities Act) requires the Commission to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the RPS program. The RPS requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

This bill would revise the target of the RPS to achieve an increase in the amount of electricity procured from eligible renewable energy resources, so that it equals 20% of the total electricity sold to retail customers in California per year by the year 2010. The Energy Commission would be required to review the feasibility of increasing the target to 33% by the year 2020. The bill would authorize the Commission to set procurement targets for any year beginning 2011, in excess of 20% and to vary procurement targets among electrical corporations. The bill would require the Commission adopt flexible

rules that permit an electrical corporation to purchase TRECs. The bill would authorize the Commission to limit the quantity of TRECs that an electrical corporation is authorized to procure in meeting its annual renewable energy procurement targets.

This bill adds P.U. Code sec. 399.17 which would authorize an ESP or CCA to meet its obligations under the RPS program through procurement of TRECs. This new code section would also make an ESP or CCA ineligible to receive supplemental energy payments unless it is in compliance with its obligations under the RPS program.

Under existing P.U. Code sec. 387, a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard the recognizes the intent of the Legislature to encourage renewable energy resources.

This bill would amend P.U. Code sec. 387 to require that a local publicly owned electric utility increase its total procurement of eligible renewable energy resources by at least 1% per year from 2004 procurement levels, so that at least 20% of the utility's retail sales of electricity are procured by 2017. This bill would allow a local publicly owned electric utility to meet its annual procurement target through the procurement of TRECs.

DIVISION ANALYSIS (DSP): The bill is consistent with ongoing Commission efforts to develop the RPS program. The bill encourages the continued collaboration between the CPUC and CEC on renewable energy issues. The CEC is charged with doing the following under the proposed legislation:

- Reporting to the Legislature regarding the feasibility of increasing the RPS target to 33% by 2020.
- Contracting for an accounting system to track TREC activity.
- Developing a renewable energy report regarding proposed funding activity for the period 2007-2012. Existing law requires that the CEC prepare an "investment plan," which must subsequently be approved by the Legislature. This bill eliminates this Legislative authorization requirement.
- Establishing an aggregate "baseline" assessment of present renewable energy procurement by the municipal utilities in total, and establishing an "annual procurement target" (APT) for the municipal utilities as a whole.

Certain relatively insignificant aspects of Commission oversight of the RPS program are limited via this bill.

- In describing the contents of the required RPS procurement plan, the phrase "but is not limited to" is struck, suggesting that the Commission could not add other planning requirements. However, the stipulated planning requirements are quite expansive, and nothing in this bill would prohibit the Commission from requiring other elements in, for example, the general long-term procurement planning process.
- Similarly, the phrase "but not limited to" is struck from the Code section that describes the flexible compliance mechanisms the Commission can allow for electrical corporations. The TREC option is added here, in addition to the provisions

the Commission has previously implemented, resulting in no new restrictions on present Commission activity.

RECOMMENDED AMENDMENTS:

The bill exhibits one inconsistency that should be pursued before the bill reaches its final form, but which does not present a fatal flaw:

- P.U. Code sec. 399.15 (g) would add a requirement that the Commission and CEC “evaluate *regional* trading of renewable energy certificates” (emphasis added) to determine if any barriers to RPS success are being created. The language directing the Commission and CEC to develop the TREC system, however, emphasizes the continued deployment of statutorily defined “eligible renewable energy resources,” which must be delivered *in state* under present law. This language creates ambiguity as to whether the TREC program would encompass generation that is not delivered in California, and is therefore of no benefit to the state’s goals for resource adequacy.

LEGISLATIVE HISTORY

SB 1078 and SB 1038 (Stats. 2002) established the RPS program. SB 1478 (Stats. 2004) would have established a TREC system, but was vetoed by the Governor.

STATUS:

Set for hearing in the Assembly Utilities & Commerce Committee on April 18, 2005.

SUPPORT/OPPOSITION:

Support: Schwarzenegger Administration (sponsor)

Opposition: None on file.

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Date: April 1, 2005

BILL LANGUAGE:

BILL NUMBER: AB 1585 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Blakeslee

FEBRUARY 22, 2005

An act to amend Sections 25740, 25746, 25747, and 25750 of, to add Section 25752 to, and to repeal Section 25749 of, the Public Resources Code, to amend Sections 385, 387, 399.6, 399.12, 399.13, 399.14, and 399.15 of, and to add Section 399.17 to, the Public Utilities Code, relating to renewable energy resources, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1585, as introduced, Blakeslee. Renewable energy resources: California Renewables Portfolio Standard.

(1) Existing law expresses the intent of the Legislature, in establishing the Renewable Energy Resources Program, to increase the amount of renewable electricity generated per year, so that it equals at least 17% of the total electricity generated for consumption in California per year by 2006.

This bill would declare the additional intent of the Legislature to increase the amount of electricity generated per year from renewable sources, so that it equals 20% of the total electricity sold to retail customers in California per year by the year 2010.

(2) The Public Utilities Act imposes various duties and responsibilities on the Public Utilities Commission (CPUC) with respect to the purchase of electricity and requires the CPUC to review and adopt a procurement plan and a renewable energy procurement plan for each electrical corporation pursuant to the California Renewables Portfolio Standard Program. The program requires that a retail seller of electricity, including electrical corporations, community choice aggregators, and electric service providers, but not including local publicly owned electric utilities, purchase a specified minimum percentage of electricity generated by eligible renewable energy resources, as defined, in any given year as a specified percentage of total kilowatthours sold to retail end-use customers each calendar year (renewables portfolio standard). The renewables portfolio standard requires each electrical corporation to increase its total procurement of eligible renewable energy resources by at least an additional 1% of retail sales per year so that 20% of its retail sales are procured from eligible renewable energy resources no later than December 31, 2017.

Existing law requires the State Energy Resources Conservation and Development Commission (Energy Commission) to certify eligible renewable energy resources, to design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, and to allocate and award supplemental energy payments to cover above-market costs of renewable energy.

This bill would revise the target of the renewables portfolio

standard to achieve an increase in the amount of electricity procured from eligible renewable energy resources, so that it equals 20% of the total electricity sold to retail customers in California per year by the year 2010. The Energy Commission would be required to review the feasibility of increasing the target to 33% by the year 2020, and to report the results of the review to the Governor and Legislature by July 1, 2007. The bill would authorize the CPUC to set procurement targets for any year beginning 2011, in excess of 20% and to vary procurement targets among electrical corporations. The bill would require the CPUC to adopt flexible rules that permit an electrical corporation to purchase tradeable renewable energy certificates, as defined, from an eligible renewable energy resource. The bill would authorize the CPUC, in consultation with the Energy Commission, to limit the quantity of tradeable renewable energy certificates that an electrical corporation is authorized to procure in meeting its annual renewable energy procurement targets. The bill would authorize an electric service provider or community choice aggregator to meet its obligations under the renewables portfolio standard program through procurement of tradeable renewable energy certificates. The bill would authorize the Energy Commission, notwithstanding any other law, to contract for services to develop and implement an accounting system to verify compliance with the renewables portfolio standard. The bill would make an electric service provider or community choice aggregator ineligible to receive supplemental energy payments unless it is in compliance with its obligations under the renewables portfolio standard program.

(3) Under the Public Utilities Act, the CPUC requires electrical corporations to identify a separate rate component to fund programs that enhance system reliability and provide in-state benefits. This rate component is a nonbypassable element of local distribution and collected on the basis of usage. The funds are collected to support cost-effective energy efficiency and conservation activities, public interest research and development not adequately provided by competitive and regulated markets, and renewable energy resources (renewable energy public goods charge). Existing law requires the Energy Commission to transfer funds collected by electrical corporations for in-state operation and development of existing and new and emerging renewable resources technologies into the Renewable Resource Trust Fund, to fund specified programs.

Under the Reliable Electric Service Investments Act, the Energy Commission was required to hold moneys collected for renewable energy and deposited in the Renewable Resource Trust Fund until further action by the Legislature. The act requires the Energy Commission to create an initial investment plan, in accordance with specified objectives, to govern the allocation of funds in the Renewable Resource Trust Fund collected between January 1, 2002, and January 1, 2007, in order to ensure a fully competitive and self sustaining California renewable energy supply. Existing law requires the Energy Commission, on or before March 31, 2006, to prepare an investment plan proposing the application of moneys collected between January 1, 2007, and January 1, 2012.

This bill would delete the requirement that moneys collected for renewable energy and deposit in the Renewal Resource Trust fund be held until further action by the Legislature. The bill would require the Energy Commission, on or before March 31, 2006, to prepare a report, rather than an investment plan, describing the application of moneys collected between January 1, 2007, and January 1, 2012, and to describe the use of any funds applied toward program activities during the period January 1, 2002, through the date of the report.

(4) Under existing law, 1% of the money collected as part of the renewable energy public goods charge is required to be deposited into the Renewable Resource Consumer Education Account, which is continuously appropriated to support dissemination of information on renewable energy technologies and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies.

This bill would additionally authorize that moneys in the account be used to verify compliance with the renewables portfolio standard program. By expanding the purposes for which moneys in a continuously appropriated fund may be spent, the bill would make an appropriation.

(5) Under existing law, the governing board of a local publicly owned electric utility is responsible for implementing and enforcing a renewables portfolio standard that recognizes the intent of the Legislature to encourage renewable energy resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement. Existing law requires the governing board of a local publicly owned electric utility to annually report certain information relative to renewable energy resources to its customers. Existing law requires each local publicly owned electric utility to establish a nonbypassable usage based charge to fund investments in specified public purpose programs, including energy efficiency and conservation, investment in renewable energy resources, research, development and demonstration programs, and providing services for low-income electricity customers. The charge is required to be not less than the lowest expenditure of the 3 largest electrical corporations in California based on a percentage of revenue.

This bill would require that a local publicly owned electric utility increase its total procurement of eligible renewable energy resources by at least 1% per year from 2004 procurement levels, so that at least 20% of the utility's retail sales of electricity are procured from eligible renewable energy resources by the year 2017. The bill would authorize a local publicly owned electric utility to meet its annual procurement target through the procurement of tradeable renewable energy certificates. The bill would require the governing board of a local publicly owned electric utility to report annually to the Energy Commission, the information relative to renewable energy resources that is annually reported to the utility's customers. By placing additional requirements upon local publicly owned electric utilities, the bill would impose a state-mandated local program. The bill would require that the nonbypassable usage based charge established by a local publicly owned electric utility be set in an amount sufficient to ensure compliance by the utility with the renewables portfolio standard.

(6) Under existing law, the Energy Commission was required to prepare and submit to the Legislature by December 1, 2003, a comprehensive renewable electricity generation resource plan.

This bill would delete that requirement.

(7) Under existing law, a violation of the Public Utilities Act or an order or direction of the CPUC is a crime.

Certain provisions of this bill would be part of the act and an order or other action of the CPUC would be required to implement certain of the provisions. Because a violation of the bill's provisions or of an implementing order or action of the CPUC would be a crime, this bill would impose a state-mandated local program by creating new crimes.

(8)

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for specified reasons.

Vote: 2/3. Appropriation: yes. Fiscal committee: yes.
State-mandated local program: yes.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 25740 of the Public Resources Code is amended to read:

25740. It is the intent of the Legislature in establishing this program, to increase the amount of ~~renewable~~ electricity generated per year *from eligible renewable energy resources*, so that it equals at least 17 percent of the total electricity generated for consumption in California per year by 2006, *and equals 20 percent of the total electricity sold to retail customers in California per year by the year 2010*.

SEC. 2. Section 25746 of the Public Resources Code is amended to read:

25746. One percent of the money collected pursuant to the renewable energy public goods charge shall be used in accordance with the report to promote renewable energy and disseminate information on renewable energy technologies, including emerging renewable technologies, and to help develop a consumer market for renewable energy and for small-scale emerging renewable energy technologies, *and to verify compliance with the renewables portfolio standard program*.

SEC. 3. Section 25747 of the Public Resources Code is amended to read:

25747. (a) The commission shall adopt guidelines governing the funding programs authorized under this chapter, at a publicly noticed meeting offering all interested parties an opportunity to comment. Substantive changes to the guidelines may not be adopted without at least 10 days' written notice to the public. The public notice of meetings required by this subdivision may not be less than 30 days. Notwithstanding any other provision of law, any guidelines adopted pursuant to this chapter or Section 399.13 of the Public Utilities Code, shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The Legislature declares that the changes made to this subdivision by the act amending this section during the 2002 portion of the 2001-02 Regular Session are declaratory of, and not a change in existing law. (b) Funds to further the purposes of this chapter may be committed for multiple years.

(c) Awards made pursuant to this chapter are grants, subject to appeal to the commission upon a showing that factors other than those described in the guidelines adopted by the commission were applied in making the awards and payments. Any actions taken by an applicant to apply for, or become or remain eligible and registered to receive, payments or awards, including satisfying conditions specified by the commission, shall not constitute the rendering of goods, services, or a direct benefit to the commission.

(d) *Notwithstanding subdivision (c), the commission may contract for services to develop and implement an accounting system to verify*

compliance with the renewables portfolio standard program pursuant to Section 399.13 of the Public Utilities Code.

SEC. 4. Section 25749 of the Public Resources Code is repealed.

~~25749. The commission shall, by December 1, 2003, prepare and submit to the Legislature a comprehensive renewable electricity generation resource plan that describes the renewable resource potential available in California, and recommendations for a plan for development to achieve the target of increasing the amount of electricity generated from renewable sources per year, so that it equals 17 percent of the total electricity generated for consumption in California by 2006. The commission shall consult with the Public Utilities Commission, electrical corporations, and the Independent System Operator, in the development and preparation of the plan.~~

SEC. 5. Section 25750 of the Public Resources Code is amended to read:

25750. (a) The commission shall participate in proceedings at the Public Utilities Commission that relate to or affect efforts to stimulate the development of electricity generated from renewable sources, in order to obtain coordination of the state's efforts to achieve the target of increasing the amount of electricity ~~generated~~ procured from ~~renewable sources per year~~ eligible renewable energy resources , so that it equals ~~17~~

~~20~~ percent of the total electricity ~~generated for consumption~~ sold to retail customers in California ~~by 2006~~ per year by the year 2010

. (b) For purposes of this section, "procured" means that a retail seller may acquire the electricity generated by an eligible renewable energy resource that it owns or with which it has contracted or may acquire tradeable renewable energy certificates. Nothing in this section is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this section.

SEC. 6. Section 25752 is added to the Public Resources Code , to read:

25752. The commission shall review the feasibility of increasing the target for electricity to be procured from eligible renewable energy resources to 33 percent by the year 2020, and to report to the Governor and the Legislature by July 1, 2007, with the results of the review. The review shall consider and report on all of the following:(a) Deliverability of electricity from eligible renewable energy resources to end users and any needed additions or upgrades to the transmission grid system.

(b) Dispatchability of electricity from eligible renewable energy resources and the consequences for the reliability of the electrical system.

(c) Long-term planning requirements identified in the 2006 procurement plans for electrical corporations approved by the Public Utilities Commission pursuant to Section 454.5 of the Public Utilities Code.

(d) Potential impacts upon the rates of electrical corporations and whether or not a renewable energy public goods charge is necessary to fund the above-market costs of electricity generated from eligible renewable energy resources.

(e) The progress made by electrical corporations toward meeting

the goal of procuring 20 percent of the electricity sold to retail customers per year by the year 2010, and the results of electrical corporation bid solicitations pursuant to a renewable energy procurement plan approved by the Public Utilities Commission pursuant to Section 399.14 of the Public Utilities Code.

(f) The progress made by all load serving entities other than electrical corporations, including the progress made by local publicly owned electric utilities as defined in subdivision (d) of Section 9604 of the Public Utilities Code, toward meeting the goal of procuring 20 percent of the electricity sold to retail customers per year by the year 2010.

SEC. 7. Section 385 of the Public Utilities Code is amended to read:

385. (a) Each local publicly owned electric utility shall establish a nonbypassable, usage based charge on local distribution service of not less than the lowest expenditure level of the three largest electrical corporations in California on a percent of revenue basis, calculated from each utility's total revenue requirement for the year ended December 31, 1994, and each utility's total annual expenditure under paragraphs (1), (2), and (3) of subdivision (c) of Section 381 and Section 382, to fund investments by the utility and other parties in any or all of the following: (1) Cost-effective demand-side management services to promote energy efficiency and energy conservation.

(2) New investment in renewable energy resources and technologies consistent with existing statutes and regulations which promote those resources and technologies , and in an amount sufficient to ensure compliance with the California Renewables Portfolio Standard program.

(3) Research, development and demonstration programs for the public interest to advance science or technology which is not adequately provided by competitive and regulated markets.

(4) Services provided for low-income electricity customers, including, but not limited to, energy efficiency services, education, weatherization, and rate discounts.

(b) Each local publicly owned electric utility that has not implemented programs for low-income electricity customers including targeted energy efficiency services and rate discounts based upon the income level of the customer, or completed an assessment of need for those programs, on or before December 31, 2000, shall perform a needs assessment for the programs described in paragraph (4) of subdivision (a) and shall hold one or more public meetings, after notice, to review the findings of the needs assessment. Following the public meetings, the governing body of the local publicly owned electric utility shall determine the amount of the total funds collected pursuant to this section to be allocated to low-income programs, including, but not limited to, targeted energy efficiency services, education, weatherization, and rate discounts. In making its decision on the need for the programs, the governing body shall consider all of the following:

(1) The number and income level of low-income customers that reside in the service area of the utility.

(2) The availability of home weatherization services to low-income customers pursuant to Section 2790.

(3) The availability of in-home energy efficiency education in the utility's service area.

(4) Other factors that may indicate a need for low-income services.

(c) Following a determination pursuant to subdivision (b) that

low-income services are needed, the local publicly owned utility shall promptly implement or expand those programs. The local publicly owned electric utility shall work with existing weatherization providers to implement energy efficiency, education, and weatherization programs.

SEC. 8. Section 387 of the Public Utilities Code is amended to read:

387. (a) Each governing body of a local publicly owned electric utility, as defined in Section 9604, shall be responsible for implementing and enforcing a renewables portfolio standard ~~that recognizes the intent of the Legislature to encourage renewable resources, while taking into consideration the effect of the standard on rates, reliability, and financial resources and the goal of environmental improvement~~. A local publicly owned electric utility shall increase its total procurement of eligible renewable energy resources by at least 1 percent per year from 2004 procurement levels, so that at least 20 percent of the utility's

retail sales of electricity are procured from eligible renewable energy resources by the year 2017. (b)

A local publicly owned electric utility may meet its annual procurement target through the procurement of tradeable renewable energy certificates.

~~—(b)—~~

(c) Each local publicly owned electric utility shall report, on an annual basis, to the State Energy Resources Conservation and Development Commission and its customers, the following:

(1) Expenditures of public goods funds collected pursuant to Section 385 for renewable energy resource development. Reports shall contain a description of programs, expenditures, and expected or actual results.

(2) The resource mix used to serve its customers by fuel type. Reports shall contain the contribution of each type of renewable energy resource with separate categories for those fuels considered eligible renewable energy resources as defined by Section 399.12.

(d) The State Energy Resources Conservation and Development Commission shall use the data supplied pursuant to subdivision (c) to calculate the total retail electrical load served by all local publicly owned electric utilities and the baseline amount of electricity delivered to retail end-use customers by local publicly owned electric utilities that was generated by eligible renewable energy resources during the 2004 calendar year. The commission shall determine a collective annual procurement target for electricity to be procured from eligible renewable energy resources by local publicly owned electric utilities. Each local publicly owned electric utility shall be responsible for meeting the annual procurement target for electricity to be procured from eligible renewable energy resources for that portion of the collective annual procurement target equal to the utility's share of overall electrical load collectively served by all local publicly owned electric utilities. For purposes of this section, "procure" and "procurement" means that a local publicly owned electric utility may acquire the electricity generated by an eligible renewable energy resource that it owns or with which it has contracted or may acquire tradeable renewable energy certificates. Nothing in this section is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling the utility's

renewables portfolio standard procurement targets.

(e) For purposes of this section, the following terms have the following meanings:

(1) "Eligible renewable energy resource" means an eligible renewable energy resource as defined in Section 399.12.

(2) "Tradeable renewable energy certificate" means a tradeable renewable energy certificate as defined in Section 399.12.

SEC. 9. Section 399.6 of the Public Utilities Code is amended to read:

399.6. (a) In order to optimize public investment and ensure that the most cost-effective and efficient investments in renewable resources are vigorously pursued, the Energy Commission shall create an investment plan as set forth in paragraphs (1) to (3), inclusive, to govern the allocation of funds provided pursuant to this article. The Energy Commission's long-term goal shall be a fully competitive and self-sustaining California renewable energy supply. The investment plan shall be in accordance with all of the following: (1) The investment plan's objective shall be to increase, in the near term, the quantity of California's electricity generated by in-state renewable energy resources, while protecting system reliability, fostering resource diversity, and obtaining the greatest environmental benefits for California residents.

(2) An additional objective of the plan shall be to identify and support emerging renewable energy technologies that have the greatest near-term commercial promise and that merit targeted assistance.

(3) The investment plan shall contain specific numerical targets, reflecting the projected impact of the plan, for both of the following:

(A) Increased quantity of California electrical generation produced from emerging technologies and from overall renewable resources.

(B) Increased supply of renewable generation available from facilities other than those selling to investor-owned utilities under contracts entered into prior to 1996 under the federal Public Utilities Regulatory Policies Act of 1978 (P.L. 95-617).

(b) The Energy Commission shall, on an annual basis, evaluate progress on meeting the targets set forth in subparagraphs (A) and (B) of paragraph (3) of subdivision (a), or any substitute provisions adopted by the Legislature upon review of the investment plan, and assess the impact of the investment plan on reducing the cost to Californians of renewable energy generation.

(c) In preparing these investment plans, the Energy Commission shall recommend allocations among all of the following:

(1) (A) Except as provided in subparagraph (B), production incentives for new renewable energy, including repowered or refurbished renewable energy.

(B) Allocations may not be made for renewable energy that is generated by a project that remains under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter.

(C) Notwithstanding subparagraph (B), production incentives for incremental new, repowered, or refurbished renewable energy from existing projects under a power purchase contract with an electrical corporation originally entered into prior to September 24, 1996, whether amended or restated thereafter, may be allowed in any month, if all of the following occur:

(i) The project's power purchase contract provides that all energy delivered and sold under the contract is paid at a price that does not exceed commission-approved short-run avoided cost of energy.

(ii) Either of the following:

(I) The power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive.

(II) If a project's installed capacity as of December 31, 1998, is less than 75 percent of the nameplate capacity as stated in the power purchase contract, the power purchase contract is amended to provide that the kilowatthours used to determine the capacity payment in any time-of-delivery period in any month under the contract shall be equal to the actual kilowatthour production, but no greater than the product of the five-year average of the kilowatthours delivered for the corresponding time-of-delivery period and month, in the years 1994 to 1998, inclusive, and the ratio of installed capacity as of December 31 of the previous year, but not to exceed contract nameplate capacity, to the installed capacity as of December 31, 1998.

(iii) The production incentive is payable only with respect to the kilowatthours delivered in a particular month that exceeds the corresponding five-year average calculated pursuant to clause (ii).

(2) Rebates, buydowns, or equivalent incentives for emerging renewable technologies.

(3) Customer credits for renewables not under contract with a utility.

(4) Customer education.

(5) Incentives for reducing fuel costs that are confirmed to the satisfaction of the Energy Commission at solid fuel biomass energy facilities in order to provide demonstrable environmental and public benefits, including, but not limited to, air quality.

(6) Solar thermal generating resources that enhance the environmental value or reliability of the electrical system and that require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for purposes of this paragraph.

(7) Specified fuel cell technologies, if the Energy Commission makes all of the following findings:

(A) The specified technologies have similar or better air pollutant characteristics than renewable technologies in the investment plan.

(B) The specified technologies require financial assistance to become commercially viable by reference to wholesale generation prices.

(C) The specified technologies could contribute significantly to the infrastructure development or other innovation required to meet the long-term objective of a self-sustaining, competitive supply of renewable energy.

(8) Existing wind-generating resources, if the Energy Commission finds that the existing wind-generating resources are a cost-effective source of reliable and environmental benefits compared with other eligible sources, and that the existing wind-generating resources require financial assistance to remain economically viable, as determined by the Energy Commission. The Energy Commission may require financial disclosure from applicants for the purposes of this paragraph.

(d) The commission shall establish a cap on the aggregate amount

of funds that may be awarded to public entities from the program that provides customer credits for renewables. The intent of the cap is to assure adequate funding of credits for residential and small commercial customers.

(e) ~~Notwithstanding any other provision of law, moneys~~

Moneys collected for renewable energy pursuant to this article shall be transferred to the Renewable Resource Trust Fund of the Energy Commission ~~, to be held until further action by the Legislature~~. The Energy Commission shall prepare and submit to the Legislature, on or before March 31, 2001, an initial investment plan for these moneys, addressing the application of moneys collected between January 1, 2002, and January 1, 2007. The initial investment plan shall also include an evaluation of and report to the Legislature regarding the appropriateness and structure of a mandatory state purchase of renewable energy. On or before March 31, 2006, the Energy Commission shall prepare ~~an investment plan proposing a report to the~~ Legislature describing the application of moneys collected between January 1, 2007, and January 1, 2012. ~~No moneys may be expended in the years covered by these plans without further legislative action.~~ The report shall describe the use of moneys applied toward program activities during the period commencing January 1, 2002, through the date of the report.

SEC. 10. Section 399.12 of the Public Utilities Code is amended to read:

399.12. For purposes of this article, the following terms have the following meanings: (a) "Eligible renewable energy resource" means an electric generating facility that is one of the following:

(1) The facility meets the definition of "in-state renewable electricity generation facility" in Section 25741 of the Public Resources Code.

(2) A geothermal generation facility originally commencing operation prior to September 26, 1996, shall be eligible for purposes of adjusting a retail seller's baseline quantity of eligible renewable energy resources except for ~~output~~ electricity certified as incremental geothermal production by the Energy Commission, provided that the incremental ~~output~~ geothermal production was not sold to an electrical corporation under contract entered into prior to September 26, 1996. For each facility seeking certification, the Energy Commission shall determine historical production trends and establish criteria for measuring incremental geothermal production that recognizes the declining output of existing steamfields and the contribution of capital investments in the facility or wellfield.

(3) The ~~output of~~ electricity generated by a small hydroelectric generation facility of 30 megawatts or less procured or owned by an electrical corporation as of the date of enactment of this article shall be eligible only for purposes of establishing the baseline of an electrical corporation pursuant to paragraph (3) of subdivision (a) of Section 399.15. A new hydroelectric facility is not an eligible renewable energy resource if it will require a new or increased appropriation or diversion of water under Part 2 (commencing with Section 1200) of Division 2 of the Water Code.

(4) A facility engaged in the combustion of municipal solid waste shall not be considered an eligible renewable resource unless it is located in Stanislaus County and was operational prior to September 26, 1996. ~~Output from such facilities~~

Electricity generated by a facility meeting these requirements shall be eligible only for the purpose of adjusting a retail seller's baseline quantity of eligible renewable energy resources.

(b) "Energy Commission" means the State Energy Resources Conservation and Development Commission.

(c) "Retail seller" means an entity engaged in the retail sale of electricity to end-use customers, including any of the following:

(1) An electrical corporation, as defined in Section 218.

(2) A community choice aggregator. The commission shall institute a rulemaking to determine the manner in which a community choice aggregator will participate in the renewables portfolio standard subject to the same terms and conditions applicable to an electrical corporation.

(3) An electric service provider, as defined in Section 218.3 subject to the following conditions:

(A) An electric service provider shall be considered a retail seller under this article for sales to any customer acquiring service after January 1, 2003.

(B) An electric service provider shall be considered a retail seller under this article for sales to all its customers beginning on the earlier of January 1, 2006, or the date on which a contract between an electric service provider and a retail customer expires. Nothing in this subdivision may require an electric service provider to disclose the terms of the contract to the commission.

(C) The commission shall institute a rulemaking to determine the manner in which electric service providers will participate in the renewables portfolio standard. The electric service provider shall be subject to the same terms and conditions applicable to an electrical corporation pursuant to this article. Nothing in this paragraph shall impair a contract entered into between an electric service provider and a retail customer prior to the suspension of direct access by the commission pursuant to Section 80110 of the Water Code.

(4) "Retail seller" does not include any of the following:

(A) A corporation or person employing cogeneration technology or producing ~~power~~ electricity consistent with subdivision (b) of Section 218.

(B) The Department of Water Resources acting in its capacity pursuant to Division 27 (commencing with Section 80000) of the Water Code.

(C) A local publicly owned ~~electrical~~ electric utility as defined in subdivision (d) of Section 9604.

(d) "Renewables portfolio standard" means the specified percentage of electricity generated by eligible renewable energy resources that a retail seller is required to procure pursuant to Sections 399.13 and 399.15.

(e) "Tradeable renewable energy certificate" means a certificate of proof, issued through the accounting system established by the Energy Commission pursuant to Section 399.13, that one unit of electricity was generated by

an eligible renewable energy resource. The Energy Commission shall ensure that the tradeable renewable energy certificate includes all renewable and environmental attributes associated with the production of electricity from the eligible renewable energy resource.

SEC. 11. Section 399.13 of the Public Utilities Code is amended to read:

399.13. The Energy Commission shall do all of the following:(a)

Certify eligible renewable energy resources that it determines meet the criteria described in subdivision (a) of Section 399.12.

(b) Design and implement an accounting system to verify compliance with the renewables portfolio standard by retail sellers, to ensure that *electricity generated by an eligible renewable energy* ~~output~~ resource is counted only once for the purpose of meeting the renewables portfolio standard of this state or any other state, and for verifying retail product claims in this state or any other state. *The cost to design and implement the accounting system shall be funded through the Renewable Resources Consumer Education Account of the Renewable Resource Trust Fund, established pursuant to Section 25751 of the Public Resources Code.*

In establishing the guidelines governing this accounting system, the Energy Commission shall collect data from electricity market participants that it deems necessary to verify compliance of retail sellers, in accordance with the requirements of this article and the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). In seeking data from electrical corporations, the Energy Commission shall request data from the commission. The commission shall collect data from electrical corporations and remit the data to the Energy Commission within 90 days of the request.

(c) Allocate and award supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to eligible renewable energy resources to cover above-market costs of renewable energy.

SEC. 12. Section 399.14 of the Public Utilities Code is amended to read:

399.14. (a) The commission shall direct each electrical corporation to prepare a renewable energy procurement ~~plans~~ plan as described in paragraph

(3) to satisfy its obligations under the renewables portfolio standard. To the extent feasible, this procurement plan shall be proposed, reviewed, and adopted by the commission as part of, and pursuant to, a general procurement plan process. The commission shall require each electrical corporation to review and update its renewable energy procurement plan as it determines to be necessary.

(1) (A) The commission shall not require an electrical corporation to conduct procurement to fulfill the renewables portfolio standard until the commission determines either of the following:

(i) The electrical corporation has attained an investment grade credit rating as determined by at least two major rating agencies.

(ii) The electrical corporation is able to procure eligible renewable energy resources on reasonable terms, those resources can be financed if necessary, and the procurement will not impair the restoration of an electrical corporation's creditworthiness. This provision shall not apply before April 1, 2004, for any electrical corporation that on June 30, 2003, is in federal court under Chapter 11 of the federal ~~bankruptcy law~~ Bankruptcy Code (11 U.S.C. Sec. 1101 et seq.) .

(B) Within 90 days of the commission's determination as provided in subparagraph (A), an electrical corporation shall conduct solicitations to implement a renewable energy procurement plan. The determination required by this paragraph shall apply only to the requirements established pursuant to this article. The requirements established for an electrical corporation pursuant to Section 454.5 shall be governed by that section.

(2) ~~Not later than six months after the effective date of this section, the~~ The commission shall adopt,

by rule, for all electrical corporations, all of the following:

(A) A process for determining market prices pursuant to subdivision (c) of Section 399.15. The commission shall make specific determinations of market prices after the closing date of a competitive solicitation conducted by an electrical corporation for eligible renewable energy resources. In order to ensure that the market price established by the commission pursuant to subdivision (c) of Section 399.15 does not influence the amount of a bid submitted through the competitive solicitation in a manner that would increase the amount ratepayers are obligated to pay for *electricity generated by eligible renewable energy resources*, and in order to ensure that the bid price does not influence the establishment of the market price, the electrical corporation shall not transmit or share the results of any competitive solicitation for eligible renewable energy resources until the commission has established market prices pursuant to subdivision (c) of Section 399.15.

(B) A process that provides criteria for the rank ordering and selection of least-cost and best-fit *eligible renewable energy resources* to comply with the annual California Renewables Portfolio Standard Program obligations on a total cost basis. This process shall consider estimates of indirect costs associated with needed transmission investments and ongoing utility expenses resulting from integrating and operating eligible renewable energy resources.

(C) Flexible rules for compliance including ~~—, but not limited to,—~~ *both of the following*:

(i) *Rules permitting electrical corporations to apply excess procurement in one year to subsequent years or inadequate procurement in one year to no more than the following three years.*

(ii) *Rules permitting electrical corporations to purchase tradeable renewable energy certificates from an eligible renewable energy resource.*

(D) Standard terms and conditions to be used by all electrical corporations in contracting for eligible renewable energy resources, including performance requirements for renewable generators.

(3) Consistent with the goal of procuring the least-cost and best-fit eligible renewable energy resources, the renewable energy procurement plan submitted by an electrical corporation shall include ~~—, but is not limited to,—~~ all of the following:

(A) An assessment of annual or multiyear portfolio supplies and demand to determine the optimal mix of renewable generation resources with deliverability characteristics that may include peaking, dispatchable, baseload, firm, and as-available capacity.

(B) Provisions for employing available compliance flexibility mechanisms established by the commission.

(C) A bid solicitation setting forth the need for renewable generation of each deliverability characteristic, required online dates, and locational preferences, if any.

(4) In soliciting and procuring eligible renewable energy resources, each electrical corporation shall offer contracts of no less than 10 years in duration, unless the commission approves of a contract of shorter duration.

(5) In soliciting and procuring eligible renewable energy resources, each electrical corporation may give preference to projects that provide tangible demonstrable benefits to communities with a plurality of minority or low-income populations.

(b) The commission shall review and accept, modify, or reject each

electrical corporation's renewable energy procurement plan 90 days prior to the commencement of renewable procurement pursuant to this article by the electrical corporation.

(c) The commission shall review the results of a renewable energy resources solicitation submitted for approval by an electrical corporation and accept or reject proposed contracts with eligible renewable energy resources based on consistency with the approved renewable energy procurement plan. If the commission determines that the bid prices are elevated due to a lack of effective competition amongst the bidders, the commission shall direct the electrical corporation to renegotiate ~~such~~ the contracts or conduct a new solicitation.

(d) If an electrical corporation fails to comply with a commission order adopting a renewable energy procurement plan, the commission shall exercise its authority pursuant to Section 2113 to require compliance.

(e) Upon application by an electrical corporation, the commission may authorize another entity to enter into contracts on behalf of customers of the electrical corporation for deliveries of eligible renewable energy resources to satisfy the annual renewables portfolio standard obligations, subject to similar terms and conditions applicable to an electrical corporation. The commission shall allow the procurement entity to recover reasonable costs through retail rates subject to review and approval.

(f) Procurement and administrative costs associated with long-term contracts entered into by an electrical corporation for eligible renewable energy resources pursuant to this article, at or below the market price determined by the commission pursuant to subdivision (c) of Section 399.15, shall be deemed reasonable per se, and shall be recoverable in rates.

(g) For purposes of this article, "procure" means that ~~a utility~~ an electrical corporation may acquire the ~~renewable output of electric generation facilities~~ electricity generated by an eligible renewable energy resource that it owns or for which it has contracted. Nothing in this article is intended to imply that the purchase of electricity from third parties in a wholesale transaction is the preferred method of fulfilling a retail seller's obligation to comply with this article.

(h) Construction, alteration, demolition, installation, and repair work on an eligible renewable energy resource that receives production incentives or supplemental energy payments pursuant to Sections 25742 and 25743 of the Public Resources Code, including ~~, but not limited to,~~ work performed to qualify, receive, or maintain production incentives or supplemental energy payments is "public works" for the purposes of Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

SEC. 13. Section 399.15 of the Public Utilities Code is amended to read:

399.15. (a) In order to fulfill unmet long-term resource needs, the commission shall establish a renewables portfolio standard requiring all electrical corporations to procure a minimum quantity of ~~output from~~ electricity generated by eligible renewable energy resources, or an equivalent quantity of tradeable renewable energy certificates, as a specified percentage of total kilowatthours sold to their retail end-use customers each calendar year, if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public

Resources Code, to cover the above-market costs of eligible renewables, and subject to all of the following: (1) An electric corporation shall not be required to enter into long-term contracts with eligible renewable energy resources that exceed the market prices established pursuant to subdivision (c) of this section.

(2) The Energy Commission shall provide supplemental energy payments from funds in the New Renewable Resources Account in the Renewable Resource Trust Fund to eligible renewable energy resources pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, consistent with this article, for above-market costs. Indirect costs associated with the purchase of eligible renewable energy resources, such as imbalance energy charges, sale of excess energy, decreased generation from existing resources, or transmission upgrades shall not be eligible for supplemental energy payments, but shall be recoverable by an electrical corporation in rates, as authorized by the commission.

(3) For purposes of setting annual procurement targets, the commission shall establish an initial baseline for each electrical corporation based on the actual percentage of retail sales procured from eligible renewable energy resources in 2001, and, to the extent applicable, adjusted going forward pursuant to subdivision (a) of Section 399.12.

(b) The commission shall implement annual procurement targets for each electrical corporation as follows:

(1) Beginning on January 1, 2003, each electrical corporation shall, pursuant to subdivision (a), increase its total procurement of eligible renewable energy resources by at least an additional 1 percent of retail sales per year so that 20 percent of its retail sales are procured from eligible renewable energy resources no later than December 31, ~~2017~~ 2010. An electrical corporation with 20 percent of retail sales procured from eligible renewable energy resources in any year prior to 2010 shall not be required to increase its procurement of such resources in the following year. *The commission, in consultation with the Energy Commission, may set procurement targets for any year beginning 2011, in excess of 20 percent. The commission may vary procurement targets among electrical corporations.*

(2) Only for purposes of establishing these targets, the commission shall include all ~~power~~ electricity sold to retail customers by the Department of Water Resources pursuant to Section 80100 of the Water Code in the calculation of retail sales by an electrical corporation.

(3) In the event that an electrical corporation fails to procure sufficient eligible renewable energy resources in a given year to meet any annual target established pursuant to this subdivision, the electrical corporation shall procure additional eligible renewable energy resources in subsequent years to compensate for the shortfall if sufficient funds are made available pursuant to paragraph (2), and Section 399.6 and Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, to cover the above-market costs of eligible ~~renewables~~ renewable energy resources.

(4) If supplemental energy payments from the Energy Commission, in combination with the market prices approved by the commission, are insufficient to cover the above-market costs of eligible renewable energy resources, the commission shall allow an electrical corporation to limit its annual procurement obligation to the quantity of eligible renewable energy resources that can be procured with available supplemental energy payments.

(c) The commission shall establish a methodology to determine the market price of electricity for terms corresponding to the length of contracts with renewable generators, in consideration of the following:

(1) The long-term market price of electricity for fixed price contracts, determined pursuant to the electrical corporation's general procurement activities as authorized by the commission.

(2) The long-term ownership, operating, and fixed-price fuel costs associated with fixed-price electricity from new generating facilities.

(3) The value of different products including baseload, peaking, and as-available ~~output~~ electricity .

(d) The establishment of a renewables portfolio standard shall not constitute implementation by the commission of the federal Public Utility Regulatory Policies Act of 1978 (Public Law 95-617).

(e) The commission shall consult with the Energy Commission in calculating market prices under subdivision (c) and establishing other renewables portfolio standard policies.

(f) In approving an electrical corporation's renewable energy procurement plan, the commission, in consultation with the Energy Commission, may limit the quantity of tradeable renewable energy certificates that the electrical corporation is authorized to procure in meeting annual renewable energy procurement targets.

(g) The commission, in consultation with the Energy Commission, shall evaluate regional trading of renewable energy certificates to determine if trading of renewable energy certificates is creating any barriers to the goal of the California Renewables Portfolio Standard program to incentivize the generation of electricity from eligible renewable energy resources.

SEC. 14. Section 399.17 is added to the Public Utilities Code , to read:

399.17. (a) An electric service provider or community choice aggregator may meet its obligations under the renewables portfolio standard program through procurement of tradeable renewable energy certificates.(b) An electric service provider or community choice aggregator shall not be eligible to receive supplemental energy payments pursuant to Chapter 8.6 (commencing with Section 25740) of Division 15 of the Public Resources Code, unless it is in compliance with its obligations under the renewables portfolio standard program.

SEC. 15.

No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because certain costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

With regard to any other mandates, no reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.